

In Illinois, lessors of tangible personal property under true leases in Illinois are deemed end users of the leased property. See 86 Ill. Adm. Code 130.2010. (This is a GIL).

June 25, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated May 25, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please acknowledge this letter as my request to be re-imbursed for the sales tax that I have been charged twice for the purchase of my car.

I purchased a car from COMPANY in CITY and eventually bought out the lease. When I first purchased the car, the COMPANY charged me Illinois sales tax. I had to pay sales tax a second time when I bought out the lease.

Now I realize that the leasing company acts as a private company, but why wouldn't the sales tax paid to them go to the State of Illinois. If that is true why was another sales tax due on the purchase of the same car.

It has also come to my attention that there is a bill pending in the Illinois legislature to correct this dual tax on the purchase of automobiles in Illinois. If so, how can I get some information regarding this bill?

Could you help explain this problem to me.

We understand your consternation resulting from your recent purchase of a used motor vehicle coming off lease. However, the tax treatment did not constitute double taxation because over the life of this vehicle there were two separate sales transactions that were taxed.

The original purchase of the vehicle by the lessor constituted the first sales transaction and was subject to Use Tax liability on the part of the lessor because lessors of tangible personal property under true leases in Illinois are deemed end users of the leased property. Please see the enclosed copy of 86 Ill. Adm. Code 130.2010. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the

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tax to the Department. Under Illinois law, lessors may not "pass through" their tax obligation on to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

A second separate transaction took place that was subject to the Retailers' Occupation Tax when the vehicle was subsequently sold, either by the lessor or a dealer. Lessors or rentors of motor vehicles are considered to be retailers when they sell automobiles coming off lease. Section 1c of the Retailers' Occupation Tax Act (35 ILCS 120/1c) provides, in part, that "[a] person who is engaged in the business of leasing or renting motor vehicles to others and who, in connection with such business sells any used motor vehicle to a purchaser for his use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail." Therefore, when lessors sell automobiles coming off lease to purchasers, the lessors will incur Retailers' Occupation Tax liability on the gross receipts from such sales. Please see 86 Ill. Adm. Code 130.111, enclosed. Their Illinois purchasers incur the corresponding Use Tax liability.

In summary, there are different tax consequences under Illinois sales tax laws that can apply to sales of motor vehicles depending upon the facts of the particular transactions. These results are due to the current statutory provisions that the Illinois General Assembly has enacted. House Bill 402 was proposed this legislative session and would have created a new tax on lease receipts and would have lowered the Retailers' Occupation Tax rate imposed on sales of vehicles coming off lease. The bill did not pass the Illinois General Assembly. For information on Illinois legislation, you can access the Illinois General Assembly Web site at www.legis.state.il.us.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.